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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of the Application of:

11 **Jennifer L. Ory**

Precedent Decision No. 01 – 07

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13 A hearing on this application was held on July 31, 2001, at 1:30 p.m. in Sacramento,
14 California, by Christina M. Aceituno, Hearing Officer, who was assigned to hear this matter by the
15 Executive Officer of the California Victim Compensation and Government Claims Board (Board).

16 The applicant, Jennifer L. Ory, attended the hearing. Ms. Ory is not represented in her
17 application and brought no additional witnesses.

18 **Claim History**

19 The application for Victims Compensation Program (program) assistance was received
20 July 29, 1998. The applicant requested assistance with medical bills, mental health counseling,
21 income loss and rehabilitation. As of this time, bills totaling approximately \$68,079 have been
22 submitted for medical expenses, including hospitalization. The application was recommended for
23 denial on the February 9, 1999, consent agenda and was appealed.

24 **Summary of Issues**

25 Staff recommended the application be denied because it was determined that Ms. Ory was
26 involved in the events leading to the crime by accepting a ride on a motorcycle driven by a driver
27 whom she knew or should have reasonably known was drunk or under the influence of drugs.
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Findings of Fact

According to the traffic collision report, on May 30, 1998, Jennifer Ory was involved in a motorcycle accident as the passenger. John Allen Furio was the driver of the motorcycle. Joe Gonsalves owned the motorcycle. The traffic report noted the victim suffered abrasions to both legs and back and was transported to John Muir Hospital. The driver, Mr. Furio complained of pain to his shoulder. The officer noted that when he arrived, the driver was sitting on the curb and Ms. Ory was lying on the ground next to him. The report noted that the motorcycle sustained major damage and was towed away.

The traffic report also noted that Mr. Furio was arrested at the scene for driving under the influence of alcohol. The report concluded with the finding that Mr. Furio was traveling at a high rate of speed when he lost control of the motorcycle and collided with the curb. Both the driver and passenger were thrown from the motorcycle.

In the criminal proceedings verification form, Sergeant Robert Duffield verified that the victim was not involved in the events leading to her injury.

An unsigned document from the Municipal Court of Contra Costa County received December 29, 1998, charged Mr. Furio with violations of Vehicle Code sections 23153(a) [Driving Under the Influence Causing Injury], and 23153(b) [Driving with .08% Blood Alcohol Causing Injury].

According to Ms. Ory's testimony, she was visiting a friend who lived in a marina/golf course complex in Martinez, California. They pulled into the parking lot in Ms. Ory's car near the clubhouse. The victim and her friend spotted two friends of her companion who were both driving motorcycles. One of these individuals was John Furio whom Ms. Ory had never met. They talked for a few minutes in the parking lot and decided to go into the clubhouse to have drinks. While they were talking and walking in, they talked about the fact that Ms. Ory had never ridden a motorcycle. Her companion mentioned that he would take her for a ride. However, Mr. Furio stated that he did not own the motorcycle but was borrowing it from the owner because he was thinking of buying it. It was decided that instead Mr. Furio would take Ms. Ory for a ride. Ms. Ory said that they had walked into the bar area of the clubhouse and she had ordered a drink. She does not recall whether Mr. Furio ordered a drink. She specifically remembered that she had not begun to drink her beverage before they went outside; in fact, she was not certain if the drink order had even been served. She clearly remembered that Mr. Furio

1 did not drink in her presence before the accident. She left her belongings with her friend and went out to
2 the parking lot. Ms. Ory stated that she expected they would go for a short ride on the streets around the
3 golf course and marina and would quickly return to their other friends.

4 Ms. Ory testified that she was very confident in her answers to questions about the possible
5 use of alcohol by Mr. Furio because she was asked to testify in the court proceedings involving charges
6 of DUI against Mr. Furio. She stated that in that testimony, she was asked similar questions.

7 Ms. Ory noted that the elapsed time from when she was introduced to Mr. Furio and the time
8 they got on the motorcycle was about 20 minutes. Ms. Ory testified that both she and the driver wore
9 helmets. She borrowed a helmet from the second motorcycle driver. She felt nervous, but because
10 Mr. Furio and her friend had ridden together previously, she had the impression that Mr. Furio was an
11 experienced motorcycle rider and driver.

12 Ms. Ory testified that she did not smell alcohol on Mr. Furio's breath. She also testified that
13 she was not aware of, and did not observe, Mr. Furio using any other drugs. She stated he did not slur
14 his speech nor did he have any other mannerisms or behaviors that made her suspect that he was under
15 the influence of drugs or alcohol. Ms. Ory and Mr. Furio rode around the parking lot for a few minutes
16 so that she could feel more comfortable as a passenger. They then came to a stop sign and proceeded to
17 make a left turn out of the parking lot. Ms. Ory could not identify the name of the street they turned onto
18 because she does not live in the area and had never been to the complex before the day of the accident.
19 Ms. Ory had no recollection of what happened after that until she found herself lying on the pavement
20 after the accident. Ms. Ory testified that she did not move while she waited for help to arrive because
21 she sensed that she had been seriously injured.

22 Ms. Ory estimated that the distance between where they got on the bike to where the accident
23 occurred was less than a mile. She stated she heard her friend's footsteps running toward her from the
24 clubhouse after the accident.

25 Ms. Ory testified that she remembered telling Mr. Furio that he couldn't leave her after the
26 accident. She believed he wanted to leave but could not specifically remember what he said that made
27 her believe this. She stated that he did stay with her until help arrived.

28 Ms. Ory testified that she suffered "road rash" from her ankle to her buttocks on both legs,
29 abrasions to her arms and hands, a laceration to her scalp, and a torn earlobe. She testified that she also

1 suffered a broken neck. She spent several days hospitalized at John Muir Hospital in the Bay Area,
2 before being transported by ambulance to UC Davis Medical Center (UCDMC) in Sacramento where
3 she was hospitalized for several more days. She later returned to UCDMC for surgery and another
4 period of hospitalization as a result of this accident.

5 **Determination of Issues**

6 The Board shall approve an application for assistance if a preponderance of the evidence
7 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
8 (Gov. Code, § 13964(a).)

9 Unless specifically authorized, no act involving the operation of a vehicle constitutes a
10 qualifying crime. (Gov. Code, § 13960(c).) A crime involving a vehicle in which injury is caused by a
11 person under the influence of alcohol or drugs is a qualifying crime. (Gov. Code, 13960(c)(4);
12 Cal. Code Regs., tit. 2, § 654.1(b)(3).)¹

13 There is sufficient evidence that the driver of the motorcycle, John Furio, was driving under
14 the influence of alcohol or drugs when this accident occurred on May 30, 1998, and that Ms. Ory's
15 injuries resulted. Thus this incident is a qualifying crime. There is also sufficient evidence that Ms.
16 Ory was physically injured as a result of this crime and incurred a pecuniary loss as a result of those
17 injuries.

18 An application may be denied, in whole or in part, if the Board finds that denial is
19 appropriate because of the nature of the victim's involvement in the events leading to the crime. (Gov.
20 Code, § 13964(b).)

21 The Board may consider the following factors, among others, when determining whether a
22 victim was involved in the events leading to the qualifying crime: (1) the victim's conduct reasonably
23 could have led to the crime; (2) the victim intentionally created or stayed in a situation in which it was
24 reasonably foreseeable she would be victimized; (3) the victim's level of responsibility for the
25 qualifying crime; (4) the reasonable ability of the victim to avoid the involvement in the events leading
26 to the crime; and (5) the extent of harm resulting from the crime. (Reg., § 656.1(c).)

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29 ¹ All citations to regulations are to California Code of Regulations, title 2.

The Board may find the passenger of a vehicle driven by a person under the influence of alcohol or drugs involved in the events leading to the vehicle-related qualifying crime if the victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs. (Reg., § 656.6(c)(1).)

Based on the traffic report and the credible testimony of Ms. Ory, there is not significant evidence that Ms. Ory knew or should have reasonably known that Mr. Furio was under the influence of drugs or alcohol when this accident occurred. There is not a preponderance of evidence that Ms. Ory was involved in the events leading to her injuries.

Order

The application is allowed. The applicant is eligible for program assistance. All eligible expenses shall be reimbursed subject to complete verification.

Date: July 31, 2001

CHRISTINA M. ACEITUNO
Hearing Officer
California Victim Compensation and
Government Claims Board

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Precedent Decision No. 01 – 07

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15 On October 19, 2001, the California Victim Compensation and Government Claims Board
16 adopted the attached Decision as a Precedent Decision in the above-referenced matter. The Decision
17 became effective on October 19, 2001.
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19 Date: October 30, 2001

20 JANICE HILL
21 Acting Chief Counsel
22 California Victim Compensation and
23 Government Claims Board
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